IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9090 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE A.M.KAPADIA
HONOURABLE MR.JUSTICE R.H.SHUKLA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ? NO

2 To be referred to the Reporter or not ? NO

3 Whether their Lordships wish to see the fair copy of the judgment ? NO

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? NO

5 Whether it is to be circulated to the civil judge ? NO

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VINODBHAI ADITBHAI PATEL & 1 - Petitioner(s)
Versus
OFFICER ON SPECIAL DUTY LAND ACQUISITION & 5 - Respondent(s)

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Appearance :
MR MC SHAH for Petitioner(s) : 1 - 2.
Mr. R.C. Kodekar, APP, for Respondent(s) : 1 - 2.
RULE SERVED for Respondent(s) : 3 - 4.
MR DF AMIN for Respondent(s) : 5,
MR HS MUNSHAW for Respondent(s) : 6,

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CORAM : HONOURABLE MR.JUSTICE A.M.KAPADIA

and

HONOURABLE MR.JUSTICE R.H.SHUKLA

Date : 4/12/2007

CAV JUDGMENT

(Per : HONOURABLE MR.JUSTICE R.H.SHUKLA)

The present petition has been filed by the petitioners under Article 226/227 of the Constitution of India for the prayer that appropriate writ, order or direction may be issued that land bearing Survey No. 374/1 paiki and Survey No. 374/2 paiki of Karamsad (land in question) are not validly acquired by the respondents and the acquisition proceedings are illegal for want of notice under Section 9(3) of the Land Acquisition Act, 1894 (hereinafter referred to as “the Act”).

2. It is contended that the land in question belonged to Bhailalbhai Mathurbhai who died on 24.2.1945 and the father of the petitioners Patel Aditbhai Ambalal and uncle Patel Vithalbhai Ambalal inherited the aforesaid land along with other properties and mutation entry was made on 12.9.1946 (Annexure-A). Therefore, as per the revenue records they were

the joint owners. It is also contended that out of the aforesaid land bearing Survey No. 374/1, an area admeasuring 20 gunthas was in possession of the tenant Narsinhbhai Sayabhai and the said land came to be sold under the provisions of the Bombay Tenancy and Agricultural Lands Act . The remaining land remained in possession with them. It is also contended that there was a family arrangement between two brothers, namely, father of the petitioners Aditbhai Ambalal and Vithalbhai Ambalal by which the aforesaid survey numbers had gone to the share of the petitioners' father. However, father of the petitioners Aditbhai Ambalal died on 26.9.1958 and the land continued to remain in the joint name of both the brothers, though actually as per the arrangement ownership of the said land was with the father of the petitioners. It is also contended that deceased Aditbhai Ambalal left surviving his heirs, namely, (1) Shantaben w/d of Aditbhai (2) petitioner No. 2 Ranjaben, (3) Vinodbhai Ambalal and (4) Bachubhai alias Kanubhai. However, as the petitioners were minors, their mother

Shantaben as guardian was shown in mutation entry No. 7127 (Annexure-B). Thereafter, Shantaben died on 14.8.1962 and the mutation entry was made deleting the name of Shantaben in the record of rights. Thereafter, Vithalbhai Ambalal Patel died in the year 1987 and respondent Nos. 3 and 4, the heirs of Vithalbhai Ambalal Patel, applied for mutation entry dated 11.9.1996 (Annexure-C). Thereafter, brother of the petiioners Bachubhai alias Kanubhai Aditbhai died on 8.2.1978 and the entry was made (Annexure-D). It is also contended that notices under Section 135D of the Bombay Land Revenue Code were issued to the respondents and objections were raised by respondent NO. 6. However, the compensation was awarded to uncle Vithalbhai to the tune of rs. 12,443.45 and the possession was taken on 26.10.1970.

3. It has been contended that the acquisition of the land is violative of Article 19(1)(g) of the Constitution of India. It has also been contended that the declaration of

compensation by respondent No. 1 is a nullity as no notice under Section 9(3) of the Act was given to the petitioners or to the heirs of Aditbhai Ambalal Patel. Further it has been contended that as notice under Section 12(2) of the Act was not given, it was not possible for the petitioners to make an application for reference under Section 18 of the Land Acquisition Act. It is, therefore, contended that the entire proceedings is a nullity.

4. The main contention which has been raised by the petitioners that the notice as required under Section 9(3) of the Act to the occupier or the persons interested in the land must be issued and the petitioners are having interest in the land as stated, as stated above, have not been served with the notice under Section 9(3) of the Act. Therefore, it has been contended that mandatory provision has not been complied with and the omission to give notice in compliance with Section 9(3) of the Act would vitiate the proceedings and therefore the entire proceeding

is illegal and invalid and therefore the present petition has been filed.

5. Affidavit in reply has been filed on behalf of respondent No. 5. contending inter alia that the land in question has been allotted to the Company in August, 1974 and the possession thereof has been taken over by the Company on 28.11.1974. It has been denied that the petitioners are still in possession of Survey Nos. 374/1 and 374/2. It is not in dispute that the amount of compensation has been received by Vithalbhai Ambalal (uncle). It has been further contended that name of Vithalbhai was entered in the revenue record as guardian of the petitioners. It has been further contended that as the petitioners were minors in the year 1970 were represented by guardian Vithalbhai Ambalal and therefore notice under Section 9(3) of the Act appears to have been served to him.

6. Rejoinder affidavit has been filed by the petitioners reiterating the same contentions. It

has been contended inter alia regarding possession that it is only a paper transaction. It has been contended that notice under Section 9(3) of the Act was not served upon the petitioners. It has been contended that it was obligatory on the part of respondent No. 1 to serve notice under Section 9(3) of the Act through their guardian and no such notice has been given. Therefore, it has been contended that a Reference under Section 18 of the Act was required to be made for which the present petition has been filed.

7. Affidavit in reply filed by respondent No. 1 was not on record and therefore a copy thereof has been tendered by the learned A.G.P. Which has been perused.

8. It has been contended that a Notification under Section 4 of the Act dated 26.7.1963 was published in the Government Gazette and Notification under Section 6 of the Act dated 26.10.1964 was also published in the Government

Gazette. The land admeasuring 12 gunthas i.e. 11-0-12 sq. mtrs. Of the land out of Survey No. 374/1 and 37.43 sq. mtr. Out of survey No. 374/2 was acquired by G.I.D.C., Officer on Special Duty, Ahmedabad and the award was passed on 10.8.1972 under Section 11(2) of the Act and the compensation to the tune of Rs. 12,443.45 were awarded in the name of Vithalbhai Ambalal Patel and was also paid to him. Further the possession of the said land has also been taken over from the land owners with effect from 26.10.1970. Further it has been stated that for the remaining land of survey No. 374/1 paik award under Section 11(1) of the Act was passed and declared by G.S.D.I. , Ahmedabad, vide award dated 23.9.1986 and Rs. 16,587/- has been awarded for the land in question. It has been contended that a Reference under Section 30 was ordered to be made to the District Court, Kheda. However, the possession of the said land was taken over by Officer on Special Duty on 26.10.1970. Thereafter, necessary Reference under Section 30 was submitted to the District Court, Kheda, with demand draft of Rs.

16,587.90. Therefore it has been contended that as the name of the petitioners were not shown in the revenue record, notice under Section 9(3)(4) of the Act might not have been issued and served upon him as his name was not mentioned as interested person in the award. Further it has been contended that notice under Section 9(3) (4) and Section 10 of the Act inviting claims were issued and served upon the persons having interest in the land. Therefore, it has been contended that it was the duty of the interested persons to file their claims within the stipulated period. However, no claim has been filed by the petitioners at that time and the Land Acquisition Officer might have awarded in favour of Vithalbhai A. Patel. It has also been contended that notice under Section 9(3)(4) were issued and served upon the interested persons as prescribed by law . It was the function of the petitioners to lodge their claim before the Land Acquisition Officer or thereafter before the Reference Court. It has been contended that the Land Acquisition Officer passed award observing

the procedure of law and awarded compensation to Vithalbhai A. Patel whose name was mentioned as guardian in village Form 7/12 at the relevant time. It is, therefore, contended tha acquisition proceedings have been finalised in the year 1972 and therefore the prayer to declare acquisition proceedings null and void cannot be considered at this stage. It has been specifically stated that the contention that the possession of the land has not been handed over is not correct and the possession has been taken over on 29.10.1970.

9. Learned advocate Mr. M.C. Shah has submitted that the uncle has taken the compensation paid to him but he has not paid to the petitioners. He also emphatically submitted that in the revenue record or in the notice it should have been as guardian of the petitioners and in fact notice under Section 9(3) of the Act has never been served upon the petitioners and therefore, the entire proceedings are vitiated. In support of his contention learned advocate Mr. M.C. Shah referred to and relied on judgement of

this Court in the case of NATWARLAL SHANKERLAL PRAJAPATI VS. STATE OF GUJARAT & ORS., reported in 2001(4) GLR 3614 contending that the person interested has to be served with the notice under Section 9(3) of the Act and therefore as the notice under Section 9(3) of the Act has not been served upon the petitioners having interest in the land as occupier , the entire proceedings are vitiated. Further the learned advocate has also referred and relied on the judgement of Bombay High Court in the case of LAXMANRAO VS. GOVT. OF BOMBAY reported in AIR 1950 Bombay 334. It has been contended that unless the notice as required under Section 9(3) of the Act is served to the person interested, the proceedings would be vitiated. The learned advocate has referred to and relied on another judgement in the case of HUNUIKERI BROS. VS. ASST. COMMR. , DHARWAR DIVISION reported in AIR 1962 Mysore 169.

10. Mr. R.C. Kodekar, learned Assistant Government Pleader has referred to the judgement of this Court in the case of MOHMADSHARIF VS.

STATE reported in 1967 GLR 418 and submitted that there may be only one award and the petitioners even after they became major have not taken any steps for correction in the revenue record and as a matter of fact, their uncle Vithalbhai has been served as guardian of the petitioners the notice as required under Section 9(3) of the Act.

11. In view of the above rival submissions, it is required to be considered whether the prayer made by the petitioner can be entertained and/or any relief could be granted. However, the factual matrix/undisputed facts are required to be mentioned at the outset. It is not in dispute that Notification under Section 4 of the Act was issued in 1963. Thereafter, Notification under Section 6 came to be issued on 26.6.1964 which was quashed and again thereafter another Notification under Section 6 of the Act was issued on 18.1.1969. The award came to be passed on 10.8.1972. It is not in dispute that the father of the petitioners and Vithalbhai (uncle) were co-owners of the land in question.

Therefore, when these proceedings were initiated the petitioners were minor and even after the petitioners became major , no steps have been taken for making proper entries or correction in the revenue record till the award is made in the year 1972. Further it transpires from the petition itself that on one hand the petitioners are contending that they are in possession of the land in question and on the other hand it is admitted in para 8 that the possession was taken way back on 26.10.1970 and amount of compensation paid to Vithalbhai (to the tune of Rs. 12,443.45). Therefore, in view this admitted position and considering the records, the short point which requires consideration is as to whether the present petition can be entertained at this belated staged particularly when not only the possession was taken but the amount of compensation has already been paid and withdrawn. The petitioners were minor and Vithalbhai (uncle) was the guardian of the petitioners who has been served with the notice and the amount of compensation has been paid to him which has been

withdrawn by him. Therefore, provisions of Section 30 of the Act regarding apportionment could have been attracted provided the amount was not withdrawn.

12. The learned advocate for the petitioners much emphasized the aspect of notice under Section 9(3) of the Act that it has not been served upon the petitioners who are having interest in the land and therefore the entire proceedings have been vitiated. However, the petitioners were represented by the guardian to whom admittedly the notice has been served. After they became major they have not taken any steps necessary for correction or lodging the claim. Further, even when the possession was taken over in 1970, when they became majour about 1970/1972 the could have taken necessary steps but they have not taken any steps and the petition has been filed only in the year 1997. Therefore, as the petitioners have not been vigilant, the present petition cannot be entertained at this belated stage, even assuming that uncle of the

petitioners has duped money and not passed the share in the compensation to the petitioners.

13. Vithalbhai (uncle) as a guardian of the petitioners has been served with the notice and as referred to in the judgement in the case NATWARLAL SHANKERLAL PRAJAPATI VS. STATE OF GUJARAT & ORS. (supra) it has been clearly observed that failure to serve such notice to the person interested does not affect the validity of the order in the present case. Thereafter, as it transpires from the affidavit filed by the Government, reference was also made. Therefore, the contention raised by the learned advocate for the petitioners that notice has not been served to them and notice issued to Vithalbhai (uncle of the petitioners) cannot be said to be proper notice served upon them is misconceived inasmuch as Vithalbhai as guardian has been served throughout the proceedings and having failed to take necessary steps after becoming major, such grievance cannot be made by the petitioners at the belated stage. In the said judgement this

Court has referred to the earlier judgement of the Hon'ble Supreme Court in the case of STATE OF TAMIL NADU & ANR. VS. MAHALAKSHMI AMMAL & ORS., reported in AIR 1996 SC 866 and observed that irregularities in service of notice under Section 9 and 10 would not vitiate and if the compensation is accepted without protect it binds the party.

14. However, not only the entire proceedings of the acquisition have been over but the compensation has been paid and the possession has been taken over years back by the land acquisition Officer and the same was handed over to respondent No. 6. Respondent No. 6 in turn has also handed over it to the Company – respondent No. 5 who has put up the construction. Moreover, after having become major in or about 1972 when the award was made the petitioners could have taken steps for necessary correction in the revenue record which they have not done nor any claim is lodged and therefore the authorities have proceeded as per the revenue record.

However, the amount of compensation has already been paid before years and if Vithalbhai (uncle of the petitioners) has duped them, this Court would not be proper forum in the proceedings for redressing any grievance made by the petitioners. The petitioners may take appropriate proceedings against the uncle or heirs of the uncle as may be advised but the present petition cannot be entertained to settle inter se dispute regarding the distribution of the compensation which has been paid and withdrawn years back and therefore at this belated stage the grievance made by the petitioner deserves to be rejected.

15. Therefore, in our opinion the present petition deserves to be dismissed and it stands dismissed accordingly.

(A.M. KAPADIA, J)

(R.H. SHUKLA, J)

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